

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

LUABEYA KAPIAMBA,

Petitioner,

v.

Case No. 1:07-cv-335
Hon. Robert J. Jonker

ALBERTO GONZALEZ, et al.,

Respondent.

/

ORDER

Petitioner, Mr. Kapiamba, has filed a Petition for Writ of Habeas Corpus, pursuant to 28 U.S.C. § 2241. This matter is before the court on his “Motion for expedition of the petition for a writ of habeas corpus” (docket no. 31) and “Motion for leave to file supplemental authorities” (docket no. 62).

Motion for expedited review

Petitioner, a citizen of the Democratic Republic of the Congo (DRC), alleges that he has been in federal custody since his release from the Washtenaw County Jail on April 18, 2006. Petition at ¶ 19. An Immigration Judge (IJ) terminated petitioner’s asylum status and ordered him removed to the DRC on November 27, 2006. IJ Order (Nov. 27, 2006) (docket no. 6-5). Petitioner appealed the order to the Bureau of Immigration Appeals (BIA), which resulted in a remand to the IJ. BIA Opinion (May 18, 2007) (docket no. 18-2). After another hearing, the IJ denied petitioner’s request to adjust his status on October 31, 2007. IJ Order (Oct. 31, 2007) (docket no. 37-2). The BIA affirmed this order on March 25, 2008. BIA Opinion (March 25, 2008) (docket no. 52-2). Then, on May 21, 2008, the BIA denied petitioner’s motions for reconsideration and to re-open the

proceedings, at which time the order of removal became final. BIA Opinion (May 21, 2008) (docket no. 52-3). Petitioner appealed the final order of removal to the Sixth Circuit Court of Appeals, which recently denied his motion to stay his removal to the DRC pending the outcome of the appeal. *Kapiamba v. Mukasey*, No. 08-3499 (6th Cir. Aug. 6, 2008). In denying the motion, the Sixth Circuit found that petitioner's appeal had "little likelihood of success on review." *Id.*

On January 16, 2007, while the administrative appeal was pending, petitioner filed this habeas action in the Eastern District of Michigan. On January 17, 2007, that court entered an order to stay his removal or deportation "until further order of the court." *See* docket no. 2. The habeas action was transferred to this district on April 2, 2007.

The record reflects that petitioner has been detained by the federal government for over two years. Although petitioner is subject to a final order of removal, the government cannot remove him to the DRC because the removal would violate the court's January 17, 2007 stay. Under these circumstances, it is in the interests of both petitioner and the government to address this habeas petition on an expedited basis. Accordingly, petitioner's motion for expedited consideration (docket no. 31) is **GRANTED**.

Motion to file supplemental authorities

Next, petitioner has moved to file supplemental authority "on the issue of whether Petitioner was indeed convicted of an aggravated felony" sufficient to deport him. *See* docket no. 62. This motion is without merit. Under the amended provisions of 8 U.S.C. § 1252(a)(5) (the REAL ID Act of 2005), the "sole and exclusive means for judicial review of an order of removal" is a petition for review to the appellate court. *See Tilley v. Chertoff*, 144 Fed. Appx. 536, 538 (6th Cir. 2005). Here, the habeas petition not only seeks petitioner's release from incarceration, but also

challenges the validity of the IJ's order of removal. Pursuant to the REAL ID Act of 2005, this court lacks jurisdiction to consider the habeas petition insofar as it challenges that order of removal. *See Ferry v. Gonzales*, 457 F.3d 1117, 1131 (10th Cir. 2006). While this supplemental authority may be relevant to petitioner's pending appeal in the Sixth Circuit, it is irrelevant to the issue in this habeas action, i.e., whether petitioner should remain detained pending his removal to the DRC. Accordingly, the motion to file supplemental authorities (docket no. 62) is **DENIED**.

IT IS SO ORDERED.

Dated: September 2, 2008

/s/ Hugh W. Brenneman, Jr.
HUGH W. BRENNEMAN, JR.
United States Magistrate Judge